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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 JO-ANN STORES, LLC,

11 Plaintiff,

12 v.

13 SOUND PROPERTIES, LLC,

14 Defendant.

CASE NO. C19-1831JLR

ORDER DENYING MOTION
FOR RECONSIDERATION

15 Before the court is Defendant Sound Properties, LLC's ("Sound") motion for
16 reconsideration of the court's June 7, 2021, order granting Plaintiff Jo-Ann Stores, LLC's
17 ("Jo-Ann Stores") motion for summary judgment. (MFR (Dkt. # 39); 6/7/21 Order (Dkt.
18 # 36).) Motions for reconsideration are disfavored, and the court ordinarily will deny
19 such motions unless the moving party shows (a) manifest error in the prior ruling, or (b)
20 new facts or legal authority that could not have been brought to the attention of the court
21 earlier through reasonable diligence. Local Rules W.D. Wash. LCR 7(h)(1). The court
22 has carefully reviewed Sound's motion. Sound presents no new facts or legal authority

1 that could not have been brought to the court’s attention earlier with reasonable diligence.
2 (*See generally* MFR.) Instead, Sound attempts to supplement its waiver argument that it
3 presented in its opposition to summary judgment. (*See generally id.*; MSJ Resp. (Dkt.
4 # 31) at 15-18.)

5 First, Sound raises the novel argument that non-waiver provisions are “narrowly
6 construed and frequently not enforced by Washington [c]ourts.” (MFR at 1.) Not so.
7 *Wilson v. Daniels*, 198 P.2d 496 (1948), which Sound relies upon (MFR at 2), does not
8 stand for the proposition that non-waiver provisions should not be enforced but rather
9 that the specificity of the non-waiver provision matters, *see Wilson*, 198 P.2d at 500-01.
10 When the non-waiver provision is specific, the provision is enforced. *See First Un.*
11 *Mgmt v. Slack*, 679 P.2d 936, 940 (Wash. Ct. App. 1984). In its original briefing, Sound
12 provided “no argument as to why its . . . waiver defense[] survive[s]” the non-waiver
13 provisions in the Lease between the parties and the Estoppel Certificate (6/7/21 Order at
14 13; *see* MSJ Resp.); now, Sound still provides no argument on why the non-waiver
15 provisions are too general to be enforced, repeating instead that it would be “unjust to
16 enforce the lease’s non-waiver clause,” (*see* MFR at 2-3).

17 Moreover, the court noted that “[e]ven if the [non-waiver clauses] did not
18 foreclose Sound’s . . . waiver defense[], [that] defense[] still fail[s] as a matter of law”
19 because Sound “provides no evidence raising a genuine dispute of material fact regarding
20 Jo-Ann Stores’s intent to relinquish the right to assert a breach regarding the tenancy of
21 Ideal Option.” (6/7/21 Order at 13-14.) Sound does not address this deficiency. (*See*

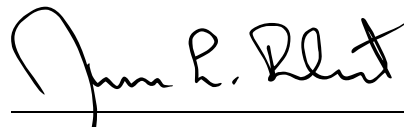
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1 MFR.) Thus, even if the non-waiver clauses should not be enforced as Sound argues, that
2 does not render the grant of summary judgment erroneous.

3 Second, Sound argues that even if Jo-Ann Stores hadn't waived its rights under
4 Section 26(vii) for Ideal Option, Jo-Ann Stores had "previously waived its rights . . . *with*
5 *respect to other tenants*" and thus had to give reasonable notice and an opportunity for
6 Sound to comply in order to reinstate those rights. (MFR at 3-4.) Again, Sound did not
7 make this argument in its original briefing and offers no explanation as to why it could
8 not have brought this argument earlier. (*See id.*; MSJ Resp.) Regardless, its argument is
9 unavailing. As the court articulated, Sound has not provided any evidence supporting
10 Jo-Ann Stores's intent to relinquish its rights, as applied to Ideal Option or the earlier
11 tenants. (*See* 6/7/21 Order at 13-14.) Thus, Sound has not established as a matter of law
12 that Jo-Ann Stores waived its rights to the earlier tenants such that the court needs to
13 consider whether there is a genuine issue of material fact regarding reasonable notice and
14 the opportunity to comply. (*See* MFR at 4.)

15 For the foregoing reasons, the court concludes that the Port has made neither of
16 the required Local Rule LCR 7(h)(1) showings. (*See generally* MFR.) Therefore, the
17 court DENIES Sound's motion for reconsideration (Dkt. # 39).

18 Dated this 25th day of June, 2021.

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21 JAMES L. ROBART
22 United States District Judge